

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of OAKLEY/SCHUTT, Minors.

UNPUBLISHED
April 10, 2014

No. 318189
St. Clair Circuit Court
Family Division
LC No. 13-000156-NA

Before: STEPHENS, P.J., and SAAD and BOONSTRA, JJ.

PER CURIAM.

Respondent father appeals as of right from a circuit court order terminating his parental rights to the minor children, RO and CS, pursuant to MCL 712A.19b(3)(b)(i), (g), and (j). We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

Petitioner sought termination of respondent's parental rights after RO revealed that respondent had sexually abused her. RO initially disclosed the abuse in a letter to her cousin shortly after it happened. When the letter was discovered months later, RO was reluctant to discuss the matter with anyone and told both an investigator with Children's Protective Services and a forensic interviewer that nothing happened. Shortly after the forensic interview, however, RO disclosed the sexual abuse when speaking privately with a police detective. RO explained that she trusted her cousin and the detective more than others. Subsequently, RO visited her paternal grandparents for the weekend. Her grandfather, David Smith, questioned her about her allegations and recorded their encounter. During this "interview," RO repeatedly stated that something had happened (she did not say what) but she could not identify the perpetrator because she had been asleep at the time. After repeated questioning by respondent's father, RO stated that respondent was not the person who molested her, and at Smith's request she wrote a letter to that effect to respondent's attorney. At the adjudication hearing, RO explained that she felt "pressure with regard to what answers were expected" from her during the questioning by her grandfather, and that her statements during the questioning and in the letter were not true; rather she "felt pressured" to write the letter because her grandparents "were drilling me about it." RO similarly admitted that she was reluctant to testify at the termination hearing because she did not want to testify against respondent. The trial court reviewed the DVD of the "interview" after all witnesses had testified, to aid in its determination of whether the letter written by RO to respondent's attorney was the product of coercion.

The trial court found RO's testimony regarding the abuse credible. The trial court further found after review of the DVD that RO's statements during the "interview" and in the letter written to respondent's attorney were the product of coercion and therefore not credible. The trial court concluded:

The Court finds her testimony to be believable. And, based on that testimony I find that . . . both basis [sic] of the child protection law that has been alleged in the petition have been established by the required preponderance of the evidence and I will assume jurisdiction of this minor child.^[1]

The trial court found that three statutory grounds for termination were established by a preponderance of the evidence: MCL 712A.19b(3)(b)(i) (child has suffered physical or sexual abuse caused by the parent's act and there is a reasonable likelihood of abuse or injury if child is placed in the parent's home), (g) (parent fails to provide proper care and custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time), and (j) (reasonable likelihood based on parental conduct that the child will be harmed if returned to the parent's home).

At the dispositional hearing, the trial court found that the three statutory grounds for termination were proven by clear and convincing evidence, stating:

In this particular case the Court heard the testimony of [RO] who testified that, as indicated frankly by Ms. Lord in her argument, that . . . her father began touching her below the waist and grabbing her privates. That he had her rubbing his back. That he touched her over her shorts with his hand. And then later he came into the bedroom and had sexual contact with her. And then on the third time he came in and tried to insert his penis into her and kissed her. And, had her touch his penis with her hand over his pants.

The Court finds that, as I indicated at the end of that particular part of this trial, that the minor child is believable and based on her testimony her father had sexually abused her. And, . . . I further found that based on the tape recording of her grandfather that the effort in that tape recording was to get her to change her statement. One thing she never changed . . . was that the incident happened. She was obviously under a lot of strain and pressure by the respondent's parents to change this so that he would not be as responsible as she has made the statement earlier, and as she had testified in this Court.

* * *

The Court finds clear and convincing evidence, based on the testimony of [RO,] that Mr. Schutt, her parent, act caused physical abuse and that based on his

¹ Pursuant to an August 2, 2013, order of adjudication, the trial court took jurisdiction over both children.

conduct thereafter, in violation of a court order, and based on his grooming of the child to begin with and moving in ever greater sexual contact with the child that the child would suffer from injury or abuse in the foreseeable future if placed back in his home.

I further find that there's clear and convincing evidence that there is a reasonable likelihood based on the conduct or capacity of Mr. Schutt that the children would be harmed if returned to his home. And when I say children, I mean both children. [E]ven though this only happened to RO, CS is at equal risk of the same thing happening to her. . . . [W]hat a parent does to one child it can be presumed that the other children are subject to the same risk.

I also find clear and convincing evidence that the parent failed to provide proper care or custody for the child and there's no reasonable expectation that it [sic] would be able to do so within a reasonable time considering the child's age. It certainly is not proper care or custody to sexually abuse your daughter in your home or at any time.

The trial court then found that termination was in the children's best interest. On appeal, respondent only challenges the trial court's finding that statutory grounds for termination were proven by clear and convincing evidence, because he argues that the trial court erred in finding RO's testimony credible.

II. STANDARD OF REVIEW

We review a trial court's decision regarding termination for clear error. MCR 3.977(K); see also *In re Mason*, 468 Mich 142, 152; 782 NW2d 747 (2010). A decision is clearly erroneous if this Court, in reviewing the entire record, is left with the definite and firm conviction that a mistake has been made. See *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003).

III. ANALYSIS

Respondent does not dispute that the RO's testimony, if believed, was sufficient to establish all of the statutory grounds for termination. He argues only that the child's testimony was not worthy of belief. Witness credibility is an issue for the trier of fact to resolve, *Morrison v Richerson*, 198 Mich App 202, 209; 497 NW2d 506 (1992), and we give due regard to the trial court's superior opportunity and ability to judge the credibility of witnesses. *Sparling Plastic Indus, Inc v Sparling*, 229 Mich App 704, 716; 583 NW2d 232 (1998).

In the instant case, RO testified that respondent sexually abused her. She testified that respondent's conduct began as harmless foot massages, but increased to more intimate contact from cuddling, to touching her genitals outside her clothing, and ultimately to attempted sexual penetration. The trial court specifically found the child to be a credible witness.

Despite some inconsistencies in RO's prior accounts with regard to whether respondent sexually abused her, her testimony describing the circumstances surrounding both her prior disclosures and her prior denials of any sexual abuse by respondent, including especially her

testimony concerning coercion by her grandparents (which the trial court was able to confirm by viewing the DVD of RO's "interview"), provided reasons for the court to credit the disclosures and to discredit the denials. Further, the trial court's opportunity to personally observe RO testify at the termination hearing placed it in a superior position to evaluate the credibility of her testimony. Under the circumstances, the trial court did not clearly err in finding that the child was a credible witness. See *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995) (evidence may be clear and convincing even if contradicted). Giving proper deference to that credibility determination, the trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence.

Affirmed.

/s/ Cynthia Diane Stephens

/s/ Henry William Saad

/s/ Mark T. Boonstra